

IN THE SUPREME COURT OF OHIO

JEFFREY BUCK, ) Case No. 14-0786  
 Plaintiff/Appellee, )  
 )  
 -vs- )  
 ) On Appeal from the Ninth  
 ) District Court of Appeals,  
 VILLAGE OF REMINDERVILLE, et al., ) Summit County,  
 ) Case No. 27002  
 Defendants/Appellants. )  
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**APPELLEE'S MEMORANDUM IN SUPPORT OF HIS POSITION  
 THAT THIS CASE IS NOT OF PUBLIC OR  
 GREAT GENERAL INTEREST**

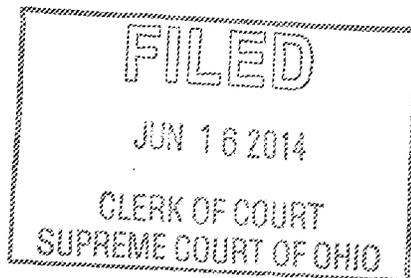
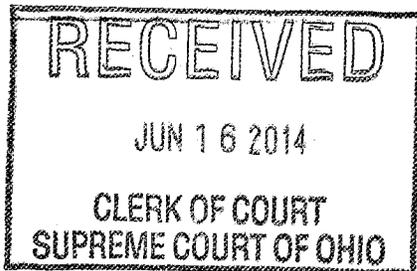
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THIS CASE IS NOT OF PUBLIC OR GREAT GENERAL INTEREST

Appellant states that this case "presents the court with the opportunity to define the scope of the absolute privilege for legislative proceedings." Appellant brief at 1. This privilege "is one of the cornerstones of our democratic society," appellant states. Appellant brief at 1.

This is an incorrect premise. The ability for a citizen to walk into a legislative proceeding and say whatever he or she wants without any fear of civil consequences is not "one of the cornerstones of our democratic society," but is in fact, an exception to the general rules in defamation cases that people are responsible for the consequences of their words and actions. One can certainly accuse another person of committing federal and state crimes such as kidnaping, breaking and entering and stealing federal drug funds. No one is saying such speech should be censored in advance. However, giving someone absolute immunity for after-the-fact defamation liability is the rare exception, not the "cornerstone of our democratic society."

Depending on the circumstance of the allegedly defamatory comments and the status of the target of those comments, i.e., private figure or public figure or public official, the law may give the alleged offender a partial immunity from liability.

But the circumstances which afford absolute immunity are supposed to be rare, and therefore, rather than the trial court and

appellate court in this case narrowly construing the privilege, as appellant avers (Appellant Brief at 1), it is appellant who is trying to radically expand the privilege in a way that is unprecedented and uncalled-for. Appellant states: "Defamation lawsuits can undermine [legislative] proceedings by discouraging citizen participation." Appellant Brief at 1.

This is nonsense. Giving all citizens the unfettered right to come to a legislative proceeding and blatantly lie about someone with no fear of consequences will not encourage citizen participation, but will encourage citizens to lie more often and more blatantly about other citizens.

As it stands now, citizens can only be held accountable for defaming a public official or public figure in a legislative proceeding if "actual malice" is proven. Under appellant's formulation, even if a speaker exhibits actual malice toward the truth, as long as it is in a legislative session, even speech which exhibits actual malice is protected. Other than some generalized goal of encouraging free speech, appellant gives no other reason why having a qualified immunity standard is not enough protection for a speaker in a legislative session. Qualified immunity protects the speaker in that defamatory speech, even if negligent, is not actionable. But the qualified immunity standard also protects the target in that if the speech is clearly false and harms the target's reputation or job and is done with knowledge of the speech's falsity or utter disregard for whether it is true or false, then the target can obtain some protection from someone who

is intent on maliciously harming his reputation. Why would we as a society want to encourage blatant lying in a legislative setting by offering the liar absolute protection? What kind of legislation would spring from that sort of protection? Why shouldn't some sort of constraint be placed on a citizen who comes to his legislature to report on the activities of another citizen?

In this case, the balancing of interests is appropriate. It is appellee's position that appellant Michael Varga, an employee of appellee Jeff Buck, the Chief of Police of Reminderville, came into a committee meeting and, with the intent of getting his own boss fired and/or indicted and being in line to take the chief's job himself, and told the committee, with an air of authority, that Buck had stolen money from a federal drug fund, had kidnaped his own employees, had broken into a resident's home and had committed a series of other legal and administrative violations. He did this knowing what he was saying was false or with utter disregard for its truth or falsity.

Appellant argues that it would be "impossible to have vigorous discussion and debate if those who present views and concerns to the legislative body are at risk for civil liability" and that "[u]nfettered discussions and debate among legislators is of little value when it is limited to the knowledge and views of the legislators themselves -- i.e., when members of the public who bring information to the legislative body aren't free to speak their minds." Appellant Brief at 2.

But, as has been stated numerous times in a variety of

judicial forums, there is no room in public discourse--nor protection from the consequences of--for false, defamatory speech. The reason the tort of defamation exists is because society has determined that there must be a balance between free speech and a person's good name. Just as there is no blanket protection for a person who yells "fire" in a crowded theater, there should be no blanket protection from liability for the person who falsely accuses his own boss of being a crook, allegations that are intended to cause his boss to lose his job and to get indicted. This is not "vigorous discussion" or "unfettered discussion and debate;" this is treacherous lying, and this Court should let stand the appellate court ruling that refused to give the appellant a free pass from the consequences of his lies.

Further, the appellate court held that the forum in which appellant spoke was not even a legislative forum, so the absolute privilege that appellant argues for, i.e., in a legislative forum, would not even apply to the committee before which he spoke.

Appellant argues that if "legislative input--members of the public presenting views, concerns and information to the legislature--were chilled by fear of defamation lawsuits, legislative decisions would be impaired." Appellant's Brief at 2-3.

This, too, is nonsense. The only persons whose input would be chilled under the current standard of qualified privilege are those with malicious intent or with malice toward the facts, i.e., people like appellant. Further, it is people like appellant who should be

chilled by the fear of litigation, because legislative decisions should not be based on pure, unadulterated lies like those told by appellant.

Appellant goes to great lengths to avoid discussing exactly what he said about appellee; In both the e-mail that he sent to Steve Milano, the president of the Reminderville Village Council and the chair of the Human Resources Committee, and in his verbal comments to the HRC, appellant said the following about his boss:

In the e-mail, appellant said appellee "violated ORC law of Breaking and Entering while trying to serve an arrest warrant for another agency." Appellant admitted in his deposition that he was not present for the incident that he alleged constituted a felony by his boss. He heard about the incident from another officer, but he never talked with the homeowner or appellee, never looked at the police report of the incident and did not even look up the elements of breaking and entering in a code book. He admitted that what he said about appellee breaking and entering into a resident's home was not true.

At the HRC meeting, appellant accused appellee of kidnaping; appellee had gotten word that someone on the police force had leaked the fact of a criminal investigation to the target of that investigation. He told his officers that they could not leave the police department conference room until someone told him who had leaked the information. Appellant in fact knew who had leaked the information but decided not to tell appellee. But at the HRC meeting, appellant said this amounted to kidnaping.

Appellant recanted this allegation during his deposition, admitting that the incident did not constitute kidnaping, since the officers all had guns, the doors were not locked, appellee did not demand any ransom and appellee did not have criminal intent.

In his e-mail and in his presentation to the HRC, appellant accused appellee of committing a federal felony by misusing federal government funds that were supposed to be earmarked for fighting drug use. Appellant said that appellee "spent federal drug money on alcohol in Michigan in 2002 and New York in 2009." He told the HRC that if the U.S. Justice Department investigated, "they'd probably take the Drug Fund away from Reminderville."

Appellee admitted in his deposition that he was not even present for the drug investigation trip to New York in 2009 and that his only evidence of appellee misusing the drug fund money was that he overheard appellee say to a waitress, in Michigan in 2002, about a bar bill, "can you make this look like food?" At the time, appellee was not police chief and did not have access to the drug fund, the drug fund was audited annually, both internally and by the Justice Department and appellant had no knowledge of whether appellee ever even applied for reimbursement of funds he paid from his own pocket on various drug task force trips. His statement about 2009 relied totally on what another officer told him, and appellant had no evidence that appellee falsified records or stole drug fund money or used it for improper purposes.

Appellant also accused appellee of lying to Village Council about the circumstances of another officer's car accident and about

the purchase of police vehicles. Appellant had no knowledge of these incidents and no evidence to support these allegations, and Council President Milano had actually told him about these incidents and asked appellant to put them in his e-mail and report and to act as though the allegations came from appellant.

Appellant also falsely accused appellee of not having proper police certification to be a peace officer, wiretapping council-members' homes or phones, extorting the mayor and using undue influence on the county prosecutor.

It is undisputed that several council-members, including those on the HRC, had been trying for several years to oust appellee as police chief. They could not do that unilaterally, since the police chief served at the pleasure of the mayor. So Milano concocted a plan whereby appellant would lodge these awful complaints about appellee in some official forum, and council would force the mayor to get rid of the chief. As sneaky as this plan was, it would be perfectly legal if the information appellant presented to the HRC had even a hint of truth. And had that been the case, appellant could probably have evaded liability for defamation because his words could not have been deemed "actual malice" and appellant would have been covered under a qualified privilege.

But appellants words do constitute actual malice. That is why appellant has to come before the trial court, the appellate court and this Court and argue for an absolute privilege. Appellant's appeal has nothing to do with the admirable notions of free speech,

unfettered discussion and debate in a legislative setting. It has to do with getting appellant out of trouble by using the extreme (and extremely rare) "get out of jail free" card of absolute privilege. If he is covered by absolute privilege, it means it does not matter that he strode into the HRC and blatantly and maliciously lied about appellant in an effort to get him fired and indicted so that he (appellant) could be the next in line for the chief's job. It matters not that the very council-members on the HRC who had been plotting ways to oust appellee actually fed appellant some of the false information appellant used in his HRC report and e-mail. It matters not that appellant's allegations were provably false.

Appellant wants this Court to hear this case and ultimately to extend absolute privilege to anyone who comes to any sort of legislative or quasi-legislative meeting, whether they are called to testify or whether they come voluntarily, whether under oath or not, because appellant wants to duck liability; appellant wants this Court to give him a license to lie.

This case is not a matter of public or great general interest. There are very few people who come to their city or state legislatures or legislative committees who require the protection of absolute immunity because they show up and blatantly lie. There are very few people, even in the rough and tumble of local or statewide legislative proceedings, who would require so much protection from civil liability that even the "actual malice" standard is not sufficient. There are very few people who would

have the audacity to say that the ability to unabashedly, unashamedly and with malicious purpose to lie in order to destroy a person's professional career and reputation is one of the "cornerstones of our democratic society."

It is hopefully very rare when public employees come in to a meeting (whether public or not, whether legislative or not, whether privileged or not) and falsely and with malicious intent, accuse their boss--with no evidence to substantiate the allegations--of state and federal crimes, all in an attempt to destroy the boss's professional career. It is this very type of offense that creates the necessity for the type of relief provided by the tort of defamation.

The law of defamation creates a balance between the right of free speech and the right of individuals to protect their reputations. In cases of public officials and public figures, the balance sways toward the speaker, making it difficult for the public official or public figure to successfully sue for defamation. A speaker has to exhibit actual malice in order for the plaintiff to prevail. But the reason absolute immunity is so rare is because our society balances the rights of the speaker with the rights of the target; if the speaker goes too far and exhibits actual malice toward the truth, then the target can sue. With absolute immunity, as appellant suggest is his entitlement because of the forum he chose in which to spew his lies, the target has no rights, no recourse and no way of salvaging his reputation or his career if a Michael Varga shows up at a legislative committee

meeting and starts rolling out the lies. Fortunately, cases like this are rare and there is no need for this Court to dignify appellant's absurd argument that somehow the fate of American democracy depends on the ability of Michael Varga to feel free to lie about his boss without even the slightest fear of civil liability. Rather, Varga and others of his ilk need to be at least a little fearful of civil liability, so that they will think twice, maybe even become a little "chilled" before calling his boss a criminal and trying to get him fired and indicted.

There is no need for this Court to hear this case. The issue here--whether a blatant liar should be afforded absolute protection for attempting to destroy his boss's career--does not require this Court's attention. Appellant is entitled to a qualified privilege and if he cannot survive this litigation even with that level of protection, then it says more about the status of his speech and his motives than it does about the status of defamation law in Ohio.

This Court should not accept jurisdiction of this case.

#### CONCLUSION

For the reasons stated herein, appellee Jeffrey Buck asserts that this case is not of public or great general interest and this Court should decline jurisdiction.

Respectfully submitted,

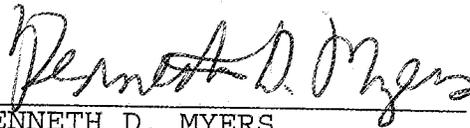


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CERTIFICATE OF SERVICE

The foregoing was sent via regular U.S. mail, postage pre-paid, to John D. Latchney, Esq., Tomino & Latchney, 803 E. Washington Street, Suite 200, Medina, OH 44256, counsel for co-defendant Village of Reminderville, and Kenneth A. Calderone, Esq., Hanna, Campbell and Powell, 3737 Embassy Parkway, Akron, OH 44333, counsel for defendant-appellant Michael Varga, on this 15<sup>th</sup> day of June, 2014.

  
KENNETH D. MYERS

Counsel for plaintiff-appellee,  
Jeffrey Buck